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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.135 OF 2002

Vishwas Nanasaheb Nimbalkar)
Prisoner No.C-1307)
Kolhapur Central Prison)
Kalamba, Kolhapur 416 007).. APPELLANT

VERSUS

The State of Maharashtra).. RESPONDENT

Ms.D.M.Shah, Advocate appointed, for the Appellant.

Mrs.P.H. Kantharia, Additional Public Prosecutor, for the Respondent.

CORAM: V.G. PALSHIKAR, Acg. C.J. & SMT.NISHITA MHATRE, J.

DATED: 7TH SEPTEMBER 2006

ORAL JUDGMENT : (PER SMT.MHATRE, J.)

. The Appellant-accused has been charged with having murdered his brother on 13th July 1999 between 9.00 and 10.00 p.m. The prosecution has alleged that the accused fatally assaulted his brother Shamrao with a sickle on his head, back and shoulder. The accused was arrested on 14th July 1999 and charged with the offence punishable under Section 302 of the Indian Penal Code. The case was committed to the Court of Additional Sessions Judge, Gadhinglaj. The accused has been convicted and sentenced to suffer life imprisonment.

2. The prosecution has examined twelve witnesses to prove its case. PW6, Ratnabai, is the sister of the

Appellant and the deceased. She has deposed that the Appellant was disgruntled because of some property dispute between himself and the deceased Shamrao. The property of their father had been partitioned ten years earlier between three brothers i.e. Shamrao-the deceased, Vishwas-the Appellant and Balasaheb. She has deposed that Shamrao was often threatened by the Appellant as the Appellant was not willing to let Shamrao have his share of the property. She has stated that on 13th July 1999 i.e. the day of the incident, she was staying in the same house as the Appellant and his family, in a separate room. The Appellant came home and mentioned that he had killed Shamrao. On hearing this, the witness and the wife of the Appellant cried out aloud. The Appellant told his wife not to shout. He then left the house, locking the common entrance door to the house. Although, this witness raised a hue and cry, none of her neighbours bothered to open the bolted door. The witness has also stated that the sons of the Appellant had gone to the farm house of Shamrao and verified that he had indeed been killed. This witness has then deposed that she left for Asgoli, where Shamrao’s family stayed, at around 7.00 a.m. on 14th July 1999 and informed them of Shamrao’s death. Shamrao’s wife and son then accompanied this witness to his farm house at Asgoli where they found the police drawing up the spot panchanama. The evidence of this witness has not been shaken in the cross-examination.

She has stated that she and the wife of Shamrao, her brother Balasaheb's son Shivaji had been to the police station for recording their statements about four to five days after the incident.

3. PW5 is the panch witness who has deposed regarding the recovery of the sickle. This witness has stated that the Appellant took him and the police to his field. They entered a hut in the field and the accused took out the sickle which was kept under a bag and plastic paper. The sickle bore blood stains on the blade. The Chemical Analyser's report which is on record indicates that the blood stains on the sickle belonged to blood group "B". The blood group of the Appellant is "O", while that of the deceased was "B". Obviously, therefore, the sickle has been used for assaulting the deceased.

4. The FIR has been lodged by the Police Patil who has stated that on 14th July 1999 at about 5.30 a.m. one Prakash Yeshwant Nimbalkar, a relative of the deceased, informed him that there was a quarrel between the deceased and the Appellant in the field at Asgoli on 13th July 1999 between 9.00 and 10.00 p.m. Prakash informed the Police Patil that the Appellant had inflicted a sickle blow on the head and back of the deceased. This witness has stated that he found Shamrao lying dead in a pool of blood. The witness has lodged

the FIR. The cross-examination of this witness does not contain any discrepancies or contradictions. The FIR which is on record discloses that Prakash had indeed informed the Police Patil about the incident. There are thus no material omissions in the deposition of the Police Patil.

5. PW1 has been examined to prove the inquest panchanama. PW2 has deposed in respect of the arrest panchanama which was drawn up when the accused was arrested. He has deposed regarding the injuries found on the body of the accused when he was arrested. PW3 has proved the seizure of clothes of the accused which were blood stained. The Chemical Analyser's report indicates that these clothes bore blood stains belonging to "B" group.

6. PW7 is the Doctor who conducted the post mortem examination. He has proved that the death of the deceased was homicidal. This Doctor has also examined the accused who suffered injuries, namely, abrasion on the left upper lip, right shoulder and his right side of his chest as well as the loss of a tooth. The Doctor's testimony and the injuries suffered by the accused indicate that there was a quarrel between the accused and the deceased Shamrao when the accused fatally assaulted the deceased. That the Appellant and the deceased had a quarrel has been spoken of by Prakash who

informed the Police Patil of the death of the deceased.

7. The learned Counsel appearing for the Appellant has submitted that PW6 and the members of Shamrao's family had their statements recorded by the police after four days of the incident. She contends that this delay would indicate that the statements are an after thought and made only with a view to implicate the Appellant. According to the learned Counsel, the Police Patil, PW4, has recorded the death only after 6.00 a.m. on 14th July 1999 when he reached the spot. She submits that although the death has allegedly occurred between 9.00 and 10.00 p.m. on 13th July 1999 when Prakash Y. Nimbalkar claims to have seen the incident, the Police Patil was informed only at around 5.30 a.m. on the next day. She submits that this Prakash who has been examined as PW10 has turned hostile and, therefore, the statement made by him to the Police Patil cannot be accepted.

8. In our opinion, the evidence on record indicates that the Appellant is responsible for the death of Shamrao. When the Appellant was arrested on 14th July 1999, he was found hiding under a bush near a stream in Asgoli Village. He was injured and, therefore, given medical treatment. The Investigating Officer, PW11, has deposed regarding the seizure of the clothes of the Appellant and the recovery of the sickle as well as the

fact that when the Appellant was arrested, he was found to have been injured.

9. The learned Counsel then submits that there is no lividity in the dead body as it had been moved several times over before the Police Patil reached the spot as well as till the body was sent for post mortem examination. She submits that in all probability the victim was killed by somebody else at some other place and not in the farm house as alleged by the prosecution. This submission of the learned Counsel is unsustainable as after the discovery of the dead body in the farm house, the body was in the custody of the Gram Panchayat Peon till the Investigating Officer reached the spot. None of the relatives of the deceased were present at the spot when the body was taken away from the spot between 10.00 and 12.00 noon on 14th July 1999. Nor is there any evidence on record indicating that somebody had some animus towards the accused and had therefore implicated him.

10. The other submission of the learned Counsel is that the clothes of the deceased were seized only on 16th July 1999 although the accused was arrested two days earlier. She submits that this delay in seizure of the clothes of the accused would also indicate that the accused was not responsible for the crime. She submits that between 14th and 16th July 1999, the Investigation

Officer has taken a personal search of the accused and asked about the weapon of assault; but he did not care to seize his clothes at that point of time. In our opinion, this aspect is not very material since after seizing the clothes, they have been sent to the Chemical Analyser. It has been proved that the clothes of the deceased bore blood stain of blood group "B" which was the blood group of the deceased.

11. In our opinion, the prosecution has proved that (i) there was enmity between the accused and the deceased over a piece of land; (ii) that the deceased had died a homicidal death; (iii) that the sickle which was used as a weapon of assault has been recovered at the instance of the accused; (iv) that the sickle and the clothes of the accused bore blood stains belonging to the blood group "B" which was the blood group of the deceased; (v) the extra judicial confession to PW6. This entire chain of circumstances, led us to the only hypothesis that is possible and that is the culpability of the accused. After scrutinising the evidence and re-appreciating it, we have formed the same opinion as that of the learned trial Judge. We, therefore, confirm the order of conviction and sentence of the Additional Sessions Judge, Gadhinglaj in Sessions Case No.1 of 2000. Appeal dismissed.

(V.G.PALSHIKAR, Acg.C.J.)

(SMT.NISHITA MHATRE, J.)